IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2006

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION Nos.46403, 27148 and 47860 of 2006
And
M.P.Nos.1, 2 to 4 and 2 of 2006

Evva Memorial Teacher Training
Institute, rep., by its Correspondent
S.Jayaparvathy, No.9/67, Vanjipuram,
Kaniyur Post, Madathukulam,
Udumalpet Taluk,
Coimbatore District. .. Petitioner in WPs.46403 and 27148/2006

1.G.Siva
2.D.Annakkodi
3.R.Baggiyalakshmi
4.A.Banupriya
5.V.Barani Chithra
6.M.Damayanthi
7.P.Deepa Rani
8.M.Dhivya
9.S.Esther
10.K.Geetha
11.R.Gokula Soundarya
12.S.Gunavathi
13.A.Hemalatha
14.N.Indirani
15.T.Karthika
16.J.Nandhini
17.K.Rajalakshmi
18.N.Rajalakshmi
19.S.Saranya
20.M.Sathiya Bama
21.S.Sumathi
22.D.Surya Prabha
23.A.Thilagavathi
24.M.Uma Devi
25.A.Yogamangalam
26.M.Arunkumar
27.B.Arunkumar
28.K.Chidambaram
29.S.Dinesh
30.P.Gnanasambantham
31.A.Jayaprathap
32.M.Jothi Rajalingam
33.D.Kanakaraj
34.M.Kannimuthu

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35.N.Karunakaran
36.M.Karuppusam
37.K.Magudeeswaran
38.C.Manikandan
39.S.Muthuirulappan
40.P.Muthuraj
41.P.Sathiyaraj
42.S.Senthilkumar
43.S.Sivakumar
44.S.Sivanandan
45.B.Suresh
46.B.Tamilanban
47.N.Vasudevan
48.M.Anandaraj .. Petitioners in WP 47860/2006

Vs.

WP No.46403/2006:

1.The Director of Teacher Education,
Research and Training,
College Road,
Chennai-6.

2.The Director of Government Examinations,
College Road,
Chennai-6.

3.The Principal,
District Institute of Education and
Training, Thirumurthy Nagar,
Coimbatore. .. Respondents

WP No.27148/2006:

1.The Regional Director,
National Council for
Teacher Education,
HMT Post, Jalhalli,
Bangalore-560 131.

2.The Director of Teacher Education,
Research and Training,
College Road,
Chennai-6.

3.The Principal,
The District Institute of Education and
Training, Thirumurthy Nagar,
Coimbatore. .. Respondents

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WP No.47860/2006:

1.The Regional Director,
National Council for
Teacher Education,
HMT Post, Jalhalli,
Bangalore-560 131.

2.The Director of Teacher Education,
Research and Training,
College Road,
Chennai-6.

3.The Director of Government Examinations,
College Road,
Chennai-6.

4.Evva Memorial Teacher Training Institute,
Thippampatti P.O.,
Pollachi-642 107. .. Respondents

WP No.46403/2006:

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Mandamus, directing the first respondent to approve the students list submitted by the petitioner's Teacher Training Institute for the academic year 2005-2006 and further direct the respondents to permit those students of the petitioners institute to sit for the examinations in the first year Diploma in Teacher Education to be held in December 2006 or on subsequent dates.

WP No.27148/2006:

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorari, calling for the records of the second respondent in Rc.No.1008/C1/2006 dated 9.8.2006 and quash the same.

WP No.47860 of 2006:

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Mandamus, directing the third respondent to issue necessary hall tickets and permit the petitioners who have under gone their first year course in D.T.Ed., for the academic year 2005-2006 to appear in the examinations to be conducted from 18.12.2006 and on subsequent dates and consequently publish their results thereunder.

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For Petitioner
in WPs.46403 and
27148/2006 : Mr.R.Muthukumarasamy,
Senior Counsel for
Mr.S.Kamadevan

For Petitioner in
WP 47860/2006 : Mr.B.Rabumanohar

For Respondents-1to3
in WP 46403/2006 and
R.2 and R.3 in
WPs.27148/2006 and
47860/2006 : Mr.Pa.Kadhirvel,
Government Advocate
(Education)

For Respondent-1 in
WPs.27148 and
47860/2006 : Mr.S.Udayakumar,
Standing Counsel for
NCTE.

For Respondent-4 in
WP 47860/2006 : Mr.R.Muthukumarasamy,
Senior Counsel for
Mr.S.Kamadevan

For Proposed Party in
WP 27148/2006 : Mr.K.Sridhar

COMMON ORDER

These three writ petitions arise out of the same conspectus of facts and hence they are disposed of by a common order.

2. An institution by name "Evva Memorial Education Trust" was said to have been registered under the Tamil Nadu Societies Registration Act way back in the year 1992 and the said Trust started a Teacher Training Institute by name "Evva Memorial Teacher Training Institute" and obtained recognition from the State Government in August 1992. However, the said Teacher Training Institute got derecognised in pursuance of the order of the Division Bench of this Court, along with hundreds of similarly placed institutes.

3. After the enactment of NCTE Act, "Evva Memorial Teacher Training Institute" having Office at Sathya Nagar, Madathukulam, Udumalpet Taluk, Coimbatore District, obtained a No Objection Certificate from the State Government, vide their letter No.29860/ U1/ 2004-1 dated 13.9.2004, for applying for recognition to NCTE for starting a two year Diploma in Teacher Education Course. Condition No.6 contained in the said No Objection Certificate dated 13.9.2004 prescribed that the institution will

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be permanently located at Thungavai Village and that the NOC was granted on the basis of land measuring 5 acres shown at Survey Nos.351/1 and 351/B Udumalpet Taluk. Condition No.9 of the NOC permitted the institution to run temporarily in a rented building and stipulated that the institute should be shifted to its own building in own land within three years of grant of recognition by NCTE.

4. In the meantime, since the application of the institute was not processed by NCTE, the petitioner claims to have obtained an order dated 4.8.2004 from this Court directing the NCTE to consider the application and pass orders.

5. Even while NCTE was processing the application for recognition, the institute entered into an unregistered lease agreement dated 29.11.2004 with one K.Ravi, for taking a portion of the building owned by him at Thippampatti, where the said K.Ravi was already running a school.

6. By an order dated 27.1.2005, NCTE granted recognition to the institute for offering a two year Elementary Teacher Training Course from the academic session 2004-2005. Interestingly, the recognition was granted to and in favour of "Evva Memorial Teacher Training Institute, Vanjipuram, Kaniyur, Coimbatore District" and was communicated to the institute, to its Thippampatti address, where the building of K.Ravi was taken on lease on 29.11.2004.

7. Paragraph-2 of the recognition order dated 27.1.2005 issued by the NCTE, reflected that the Southern Regional Committee had taken note of the fact that the institute had acquired land for setting up the institution and that the institution should have a permanent building constructed within three years on the acquired land.

8. After the grant of recognition by NCTE, the Correspondent and other representatives of the institute, entered into an unregistered Memorandum of Agreement dated 12.4.2005 with the aforesaid K.Ravi. Under the said Memorandum of Agreement, the Correspondent and other promoters of "Evva Memorial Teacher Training Institute" received one cheque for Rs.9 lakhs from K.Ravi and the cheque was encashed. They also received two post dated cheques, each for Rs.3 lakhs, from K.Ravi, totalling to a sum of Rs.15 lakhs.

9. Under the said agreement, the promoters agreed to transfer the recognition obtained from NCTE and the NOC obtained from the State Government, to the said K.Ravi. It was also stipulated in the said agreement that from the date of the agreement, K.Ravi was entitled to run the institution at Sathya Nagar, Madathukulam, in the own building of the Trust and that K.Ravi could shift the same at a future date. The promoters of the institute agreed to cooperate with K.Ravi in the matter of complying with all formalities such as change of name etc. It was also stipulated in the agreement that the authority given to K.Ravi to run the institute under the agreement, would get cancelled if the post dated cheques bounced.

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10. K.Ravi did not honour one of those post dated cheques on the ground that the promoters did not come forward to sign necessary applications for effecting a transfer of the institution. Therefore, the promoters of the institute started claiming that the authority given to K.Ravi to run the institution, got cancelled by virtue of the conditions stipulated in the agreement.

11. In the cross fire between these two parties, the students who were admitted to the Diploma Course, got caught and the results of the examination taken by them was not declared. Therefore, 48 students joined together and filed a writ petition in W.P.No.18980 of 2006, praying for a direction to publish the results of the examination. In the said writ petition, both the parties got impleaded as the owners of the institute and by an order dated 25.7.2006, the said writ petition was disposed of, directing the official respondents to declare the results. In the said order, the learned Judge made two observations, which are of significance. In para-2, the learned Judge recorded a statement from the counsel appearing for K.Ravi that though transfer has not been effected, due to the failure of the promoters to sign, K.Ravi was in possession of the institute. The learned Judge further observed that the dispute relating to the transfer of the institute was not decided.

12. In the meantime, the promoters of the institute applied to the Director of Teacher Education Research and Training for permission to shift the institute to Annai Sathya Nagar, Madathukulam, Udumalpet. But they were directed to get approval for the shift, from the NCTE. Claiming that they had sent a letter to NCTE on 29.10.2005, the promoters filed a writ petition in W.P.No.25244 of 2006, seeking a direction to the NCTE as well as the Director of Teacher Education Research and Training, for approval of the shifting of the institute. In the said writ petition, it was contended on behalf of NCTE that for the change of the premises, prior approval was necessary and that an application accompanied by a demand draft for Rs.40,000/- should be made to the Southern Regional Committee of NCTE. Therefore, the writ petition was disposed of by an order dated 10.8.2006, permitting the promoters of the institute to apply to NCTE in the prescribed format along with the necessary documents and directing NCTE to inspect the premises and pass appropriate orders in accordance with law.

13. Accordingly, the promoters of the institute submitted an application to NCTE on 14.8.2006 along with a demand draft for Rs.40,000/-.

14. In the meantime, Director of Teacher Education Research and Training passed an order dated 9.8.2006, directing the promoters of the institute not to admit students for the academic year 2006-2007, until the rival parties who stake their claim for ownership of the institute, lawfully resolve their dispute and come out clean. Challenging the said order dated 9.8.2006, the promoters filed W.P.No.27148 of 2006. The said writ petition was admitted on 22.8.2006. While admitting the writ petition, two interim orders were passed, one in M.P.No.2 of 2006 granting interim stay of the order dated 9.8.2006 of Director of Teacher Education

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Research and Training and another in M.P.No.1 of 2006, directing the NCTE to inspect the premises of the institution at Annai Sathya Nagar, Madathukulam and pass orders within three weeks on their application for shifting of location. In the said writ petition W.P.No.27148 of 2006, the agreement holder K.Ravi filed M.P.Nos.3 and 4 of 2006, for impleading as well as for vacating the interim orders. However, the NCTE has already inspected the premises at Annai Sathya Nagar, Madathukulam on 11.10.2006 and orders awaited.

15. In the meantime, the promoters had sent a list of students admitted by them, on 19.1.2006 to Director of Teacher Education Research and Training for approval and the same was not processed. Therefore, the promoters of the institute filed W.P.No.46403 of 2006 for a Writ of Mandamus, directing the Director of Teacher Education Research and Training to approve the students list submitted by them for the academic year 2005-2006 and to permit them to sit for the examinations scheduled to commence from 18.12.2006.

16. 48 students under going the Diploma Course in the rented premises belonging to K.Ravi, have filed W.P.No.47860 of 2006 for a Writ of Mandamus, directing the Director of Government Examinations to issue hall tickets to appear for the examination scheduled to commence from 18.12.2006.

17. Thus, the above three petitions W.P.Nos.27148, 46403 and 47860 of 2006 have come up for hearing. While the earliest writ petition W.P.No.27148 of 2006 is by the promoters of the institute challenging the order of the Director of Teacher Education Research and Training dated 9.8.2006 prohibiting the INSTITUTION from admitting students for the year 2006-2007, the second writ petition W.P.No.46403 of 2006 is also by the promoters for approval of the list of students admitted by them for the year 2005-2006. The third writ petition is by the students undergoing the course in the rented premises belonging to K.Ravi.

18.I have heard Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the promoters of the institute who are the writ petitioners in W.P.Nos.27148 and 46403 of 2006, Mr.M.Sekar, learned Special Government Pleader (Education) appearing for the State Government and its officials, Mr.S.Udayakumar, learned Standing Counsel for the NCTE, Mr.K.Sridhar, learned Counsel for the Agreement holder K.Ravi who seeks to get impleaded in W.P.No.27148 of 2006 and Mr.B.Rabu Manohar, learned Counsel appearing for the students undergoing the course in the premises of K.Ravi and who are the petitioners in W.P.No.47860 of 2006.

19. In the factual matrix detailed in paragraphs-1 to 17 above, the questions that arise for consideration are as follows:-

> (a) Whether the order dated 9.8.2006 issued by the Director of Teacher Education Research and Training, directing the promoters of the institute not to admit any students for the academic year 2006-2007 is valid or not?

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(b) Whether the students admitted by the promoters as well as the agreement holder K.Ravi are entitled for approval of their admission?

Question No.(a):-

20. Admittedly, Evva Memorial Educational Trust, registered under The Tamil Nadu Societies Registration Act, applied for recognition to NCTE on 30.12.2002 and obtained an order from this Court on 4.8.2004 to consider their application, to start an institute by name "Evva Memorial Teacher Training Institute". They also obtained a No Objection Certificate from the Government of Tamil Nadu on 13.9.2004. At that time, the said Trust was the Educational Agency and the institute took the property of K.Ravi at Thippampatti on lease on 29.11.2004.

21. The recognition order issued by NCTE was actually issued in the name of the institute with the following address viz., Evva Memorial Teacher Training Institute, Vanjipuram, Kaniyur-642 203, Coimbatore District, Tamil Nadu. However, it was addressed to "The Correspondent, Evva Memorial Teacher Training Institute, Sri Chintamani Memorial Matric Higher Secondary School, Udumalai-Pollachi Highways, Thippam Patti, Coimbatore District, Tamilnadu".

22. Within three months of the grant of recognition, a Memorandum of Agreement was entered into between the promoters and K.Ravi, on 12.4.2005. The Memorandum of Agreement reads as follows:-

"நிறுவன உடன்படிக்கை ஆவணம்

2005 ஆம் ஆண்டு ஏப்ரல் மாதம் 12ஆம் தேதிக்கு தமிழ் தாரண வருடம் பங்குனி மாதம் 30ஆம் தேதி

கோயமுத்தூர் மாவட்டம், உடுமலைப்பேட்டை வட்டம், கணியூர் அஞ்சல், வஞ்சிப,ரம், 9.67 நெ, இல்லத்தில் வசித்து வரும் லேட் தங்கவேலுபிள்ளை அவர்கள் குமாரரும். (Evva Memorial Teacher Training Institute) ஈவா நினைவு, ஆசிரியர் பயிற்சி நிறுவனத்தின் நிறுவனருமான த.பாலசுப்பிரமணியன் – 1 கூபி விலாசத்தில் வசித்துவரும் கூபி பாலசுப்பிரமணியன் அவர்கள் மனைவியும் கூபி (Evva Memorial Teacher Training Institute) ஈவா நினைவு, ஆசிரியர் பயிற்சி நிறுவனத்தின் இயக்குனருமான சு,.ஜெயபார்வதி–2, கோயமுத்தூர் மாவட்டம், உடுமலைப்பேட்டை வட்டம், கணியூர் அஞ்சல், வஞ்சிப,ரம், 9/67 நெ,இல்லத்தில் வசித்து வரும் T.பாலசுப்பிரமணியன் அவர்கள் குமாரரும் (Evva Memorial Teacher Training Institute) ஈவா நினைவு, ஆசிரியர் பயிற்சி நிறுவனத்தின் தலைவருமான B.கோபி – 3, கூபி விலாசத்தில் வசித்து வரும் T.பாலசுப்பிரமணியன் அவர்கள் குமாரரும் கூபி (Evva Memorial Teacher Training Institute) ஈவா நினைவு, ஆசிரியர் பயிற்சி நிறுவனத்தின் செயலாளருமான B.நந்தகுமார்–4.

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கோயமுத்து,ார் மாவட்டம், உடுமலைப்பேட்டை வட்டம், உடுமலைப்பேட்டை நகராட்சி அனுசம் நகர், 59 நெ,இல்லத்தில் வசித்து வரும் அமரர் குழந்தைவேலு அவர்கள் குமாரரும். பொள்ளாட்சி வட்டம் திப்பம்பட்டி. ஸ்ரீ சிந்தாமணி நினைவு, மெட்ரிக் மேல்நிலைப்பள்ளி தாளாளருமான K.ரவி – 5 ஆகிய நாம் ஐந்துபேரும் சேர்ந்து எழுதி வைத்துக்கொண்ட நிறுவன உடன்படிக்கை ஆவணம் என்னவென்றால்,

நம்மளில் 1,2,3,4 லக்கமிட்டவர்களுக்கு (Evva Memorial Teacher Training Institute) ஈவா நினைவு, ஆசிரியர் பயிற்சி நிறுவனத்தின் தமிழ்வழி அதாவது T.N.Govt NOC No.29860/U1/2004-1 Dt.13.9.2004 மற்றும் NCTE/2004 – 005 code APSO 1103 Dt.27.1.2005ன்படி அங்கிகாரம் பெறப்பட்டுள்ள இடைநிலை ஆசிரியர் பட்டய வகுப்ப, தமிழ் வழி மட்டும் உள்ள கல்வி நிறுவனத்தை நடத்திக்கொள்ள பெறப்பட்டுள்ள அங்கிகாரத்தை நம்மளில் 5 லக்கமிட்டவர் தன் பெயரிலோ அல்லது தான் சார்ந்த அறக்கட்டளையின் பெயரிலோ பெற்று நடத்திக் கொள்ள 5 லக்கமிட்டவர் 1,2,3,4 லக்கமிட்டவர்களுக்கு சென்னை, அண்ணாநகர், கார்ப்பரேஉடின் வங்கியின் காசோலை எண்.377764 நாள் 12.04.2005ன் படி ருபாய்.9,00,000/= (ஒன்பது இலட்சம்)மும், பின்னும் கூி சென்னை, அண்ணாநகர் கார்ப்பரேஉடின் வங்கியின் காசோலை எண், 377765, நாள் 10.09.2005ன்படி ருபாய் 3,00,000/–(முன்று இலட்சம்)மும், பின்னும் கூி சென்னை, அண்ணாநகர் கார்ப்பரேஉடின் வங்கியின் காசோலை எண், 377766, நாள் 10.09.2005ன்படி ருபாய் 3,00,000/–(முன்று இலட்சம்)மும், ஆக மொத்தம் ருபாய் 15,00,000/–(பதினைந்து இலட்சம்)மும் கீழே சாட்சிக் கையொப்பமிட்டுள்ளவர்கள் முன்னிலையில் செலுத்தியுள்ளார். கூி ருபாய் 15,00,000/–(பதினைந்து இலட்சம்) கூி அங்கீகாரம் பெற 1 முதல் 4 லக்கமிட்டவர்களுக்கு ஏற்பட்டுள்ள பல வகை செலவினங்களுக்காக செலுத்தப்படுகிற தொகை ஆகும்.

இன்று முதல் மேற்படி T.N.Govt NOC No.29860/U1/2004-1 Dt.13.9.2004 மற்றும் NCTE/2004 – 05 code APSO 1103 Dt.27.1.05ன்படி அங்கீகாரம் பெறப்பட்டுள்ள இடைநிலை ஆசிரியர் பட்டய வகுப்ப, தமிழ் வழி மட்டும் உள்ள கல்வி நிறுவனத்தை இந்த உடன்படிக்கையின்படி கூி கல்விநிறுவனம் உடுமலைப்பேட்டை வட்டம், மடத்துக்குளம், சத்யா நகரில் (அரசினர் மேல்நிலைப்பள்ளி எதிரில்) அமைந்துள்ள ஈவா கல்வி அறக்கட்டளைக்கு சொந்தமான கட்டிடத்தில் தற்சமயம் நடத்தி வர வேண்டியது என்றும் பின்வரும் காலத்தில் 5 லக்கமிட்டவர் காலத்திற்கேற்ற சூழ்நிலைக்கு தகுந்தாற்போல் கூி இ டத்தை மாற்றி அமைத்துக்கொள்ளலாம் என்றும் கூி ஈவா ஆசிரியர் பயிற்சி நிறுவனத்திற்காக அதன் பெயரில் வாங்கப்பட்டுள்ள பூமிகள் மற்றும் அதைச்சார்ந்த சொத்துக்களை 5 லக்கமிட்டவர் எந்தவிதமான பாத்தியமும் கொண்டாட உரிமை இல்லை என்றும், ஏந்தவிதமான வில்லங்க விவகாரங்களுக்கும் உட்படுத்தக் கூடாது என்றும்,

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இந்தக் கல்வி ஆண்டில் மட்டும் கூடி 5 லக்கமிட்டவர் நம்மளில் 1,2,3,4 லக்கமிட்டவர்கள் கோரும் நபர்களுக்கு இடைநிலை ஆசிரியர் பட்டய வகுப்பில் படிக்க 3 (முன்று) நபர்களுக்கு இடங்கள் அளிக்க வேண்டியது என்றும் 5 லக்கமிட்டவருக்கு வரும் காலங்களில் கூடி கல்வி நிறுவனத்தின் பெயர் மாற்றம் பெற ஏற்படும் அரசு சார்ந்த, அரசு பணிகளுக்கும், மற்றும் இதர பணிகளுக்கும் ஏற்படும் சகல உதவிகளையும், சந்தேகங்களைய ,ம், அதற்குரிய வழிமுறைகளையும் வேண்டும்பொழுது கையெழுத்து செய்யவும், நேரில் ஆஜராக வேண்டிய ஆவணங்களை பூர்த்தி செய்யவும், அது தொடர்பான அனைத்து அலுவலக பணிகளையும் 1,2,3,4 லக்கமிட்டவர்கள் எந்தவித மறுப்பும் இல்லாமல் வேண்டிய நேரத்தில் 5லக்கமிட்டவருக்கு செய்து கொடுக்க வேண்டியது என்றும், கூடி உடன்படிக்கையை ஐந்துபேரும் சமமாகப் பாவித்து நடந்துகொள்வது என்றும், யார் மீறினாலும், அதனால் ஏற்படும் சகலவிதமான கூட்ட நூட்டங்களுக்கும், கோரும் நூட்டு ஈடுகளுக்கும், கோர்ட் நடவடிக்கைகளுக்கும் அவர்களே உரியவர்கள் ஆவார்கள் என்றும்,

கூடி கல்வி நிறுவனத்திற்காக கொடுக்கப்படும் விளம்பரங்களை 5 லக்கமிட்டவர் வேண்டிய விதத்தில் அமைத்துக்கொள்ளவும், விளம்பரம் வெளியிடவும் 1,2,3,4 லக்கமிட்டவர்கள் சம்மதிக்கிறார்கள். இது சம்பந்தமாக ஏற்பட்டுள்ள சட்ட நடவடிக்கைகளை 1,2,3,4,5 லக்கமிட்டவர்கள் கலந்து பேசி அதை வாபஸ் பெற்றுக்கொண்டுள்ளோம். இன்றுமுதல் கூடி நிறுவனத்தில் எடுக்கப்படும் முடிவுகளும், இலாப நூட்டங்களும் அதைத் தொடர்ந்து ஏற்படும் பின்விளைவுகள் அனைத்தும் 5லக்கமிட்டவரையே சாரும் என்றும், கூடி 5 லக்கமிட்டவர் கூடி 1,2,3,4லக்கமிட்டவர்களுக்கு கூடி டிரஸ்ட்டின் பெயருக்கு அளிக்கப்பட்டுள்ள காசோலைகள் முறையாக வசூல் ஆகாத பட்சத்தில் 5லக்கமிட்டவருக்கு கொடுக்கப்பட்டுள்ள அதிகாரங்கள் அனைத்தும் ரத்து ஆக வேண்டியது என்றும்,

கூடி நிறுவனத்தை 5லக்கமிட்டவரைத் தவிர வேறு யாருக்கும் நடத்திக்கொள்ள எந்தவித அதிகாரமும், உரிமையும் கிடையாது. இந்தப் படிக்கு நாம் ஐந்துபேரும் சம்மதித்து எழுதி வைத்துக்கொண்ட நிறுவன உடன்படிக்கை ஆவணம்",

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23. It is seen from paragraph-3 of the aforesaid Memorandum of Agreement that what was traded between the parties, was the order of recognition granted by NCTE. The Memorandum of Agreement was followed by a receipt issued by the promoters to Mr.K.Ravi. Even the recitals contained in the said receipt confirms that what was sought to be transferred was the order of recognition. Translated into English, the relevant portion of paragraph-3 of the Memorandum of Agreement reads as follows:-

"The recognition granted to parties 1,2,3 and 4 (Evva Memorial Teacher Training Institute) for running the Teacher Training Institute Tamil Medium under NCTE/2004-05 Code APSO 1103 dated 27.1.2005 and TN Govt. NOC

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No.29860/U1/04 dated 13.9.2004, is agreed to be transferred to the party of the fifth part, in his name or in the name of any Trust to which he belongs, in consideration of the payment of
… … … … … … … … … … … …"

24. But the Certificate of Recognition granted by NCTE does not appear to be a tradable commodity or a transferable right. While a Trust, a Society, a Company, a Partnership Firm, or a Proprietory concern may be transferable, by virtue of the provisions contained in the law to which they are subjected, a Certificate of Recognition may not be transferable. The managements of body corporates in the nature of a Trust, Society, Company or Partnership Firm, are transferable by virtue of the provisions contained in The Indian Trusts Act, Societies Registration Act, The Companies Act, or The Indian Partnership Act. Therefore, such transfers of management become authorized by law.

25. It is in recognition of the transferability of the managements that The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, provides for the approval of any change in the Constitution of the Educational Agency. Section 8 of the said Act enables the "Educational Agency" to apply for approval of any change in the constitution of the Educational Agency, provided the Educational Agency and the person to whom the management is proposed to be transferred, make a joint application to the Competent Authority. But what the said Act actually permits, is the transfer of management of the Educational Agency and not the transfer of the permission granted under Section 5 or the recognition granted under Section 11 of the said Act. In other words, there is no provision in The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, for the transfer of an order of the Competent Authority granting permission under Section 5 or recognition under Section 11 of the Act.

26. The analogy from The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, has become necessary in view of the fact that the National Council for Teacher Education Act under which a Teacher Training Institute is established, does not contain a provision either for the transfer or alienation of the order of recognition or even the transfer of the management of the Educational Agency. Keeping in mind, the absence of such a provision under the National Council for Teacher Education Act, 1993, the State of Tamil Nadu amended the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by Tamil Nadu Act 11 of 1999, to include a Teacher Training Institution, within the meaning of the word "Private School" under Section 2(7) of the Act. Therefore, it can be presumed that the change in the constitution of the Educational Agency, even in respect of a Teacher Training Institution, is authorized by law, viz., Section 8 of The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. But as pointed out above, the permission contemplated under Section 8 of the said Act, is also only confined to a "change in the constitution of the Educational Agency" and "not to a transfer of the order of recognition".

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27. Therefore, the Memorandum of Agreement dated 12.4.2005 entered into between the promoters of "Evva Memorial Teacher Training Institute" and "K.Ravi" for the sale of the order of recognition issued by NCTE and the No Objection Certificate issued by the Government of Tamil Nadu, is not an agreement permitted by law.

28. It is now well settled that the right to establish and maintain an Educational Institution is protected by Article 19(1)(g) of the Constitution. But the Supreme Court has made it clear that education cannot be taken to be a trade or business, but could be treated only as an occupation. In T.M.A. PAI FOUNDATION AND OTHERS vs. STATE OF KARNATAKA AND OTHERS ((2002) 8 SCC 481), the Supreme Court held as follows:-

> "Education is per se regarded as an activity that is charitable in nature (see State of Bombay vs. R.M.D. CHAMARBAUGWALA (AIR 1957 SC 699). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation"."

Again, the Supreme Court held in in P.A.INAMDAR AND OTHERS vs. STATE OF MAHARASHTRA AND OTHERS ((2005) 6 SCC 537) as follows:-

> "89. Education, accepted as a useful activity, whether for charity or for profit, is an occupation. Nevertheless, it does not cease to be a service to society. And even though an occupation, it cannot be equated to a trade or a business."

29. Of late lot of cases come up before Court, involving rival claims over the right to manage an institution. The trend is on the increase especially in so far as the Teacher Training Institutes are concerned. If such fights happen to be merely fights over the right to manage a single institution, it can be tolerated. But unfortunately, in all those cases, with a single order of recognition granted by NCTE, the rival claimants run two or more institutes under the same name, admitting innocent students, whose admissions are eventually not approved by the University or the State. At the last minute, both the rival claimants drive the students admitted by them to come up before Court, seeking permission to write the exams. This trend is on the increase only on account of the fact that the order of recognition granted by NCTE is wrongly understood to be a tradeable or transferrable commodity. The said trend can be curtailed and thousands of students saved only if it is made clear that any agreement to transfer such a Certificate of Recognition is opposed to public policy and void in view of the provisions of Section 23 of the Indian Contract Act, 1872.

30. Under Section 23 of the Indian Contract Act, 1872, every agreement, of which, the object or consideration is unlawful, is void. Under the first limb of Section 23, the consideration or object of an agreement, is unlawful, if –

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(1) It is forbidden by law;
(2) Is of such a nature that, if permitted, it would defeat the provisions of any law;
(3) Is fraudulent;
(4) Involves or implies injury to the person or property of another;
(5) The Court regards it as immoral;
(6) Opposed to public policy.

31. The Memorandum of Agreement dated 12.4.2005 entered into between the promoters of the institute and K.Ravi, is of such a nature, that if permitted, would defeat the provisions of National Council for Teacher Education Act, 1993, and is also opposed to public policy. This is so, in view of the elaborate procedure prescribed under the said Act for the grant of recognition. Section 14 of the said Act which deals with the grant of recognition, lays down the parameters, in respect of which the Regional Committee of the National Council, should be satisfied, for the grant of recognition, under sub section (3). These parameters laid down under clause (a) of sub section (3) of Section 14 of the Act, are as to the availability of adequate financial resources, accommodation, library, qualified staff, laboratory, and the fulfillment of such other conditions by the applying institution. Under Section 15(3)(a), which is in pari materia, the same parameters are to be satisfied even for starting a new course or training, in a recognized institution also. Therefore, if an order of recognition granted by NCTE is treated to be a tradeable or transferable commodity, it would defeat the provisions of law and would also be against public policy. Hence any agreement for the alienation of an order of recognition granted by NCTE is void and unenforceable.

32. Since the Memorandum of Agreement dated 12.4.2005 is void, both parties are guilty of violating the provisions of the NCTE Act, 1993. After entering into such an agreement, both parties fell out and the promoters started running the institute at Annai Sathya Nagar, Madathukulam, while the agreement holder started running the institute at Thippampatti. Both of them have independently admitted students, resulting in an ugly situation, in which, two institutes are now run with a single order of recognition, but twice the permitted intake of students.

33. At least in so far as the promoters are concerned, they shifted the institute from Thippampatti to their own land and building at Annai Sathya Nagar, Madathukulam and applied to NCTE for permission to change the location. The Inspection Team of NCTE also visited the new venue in October 2006. Therefore, the action of the promoters, is at least tolerable, since they have made an attempt to get their action ratified or regularized. But in so far as the agreement holder K.Ravi is concerned, he admitted students, on the basis of the aforesaid agreement, without holding a recognition from NCTE, merely on the ground that he is in actual physical possession of the building where the institute was run. Hence, the admissions made by the agreement holder are wholly illegal.

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34. It is under such circumstances that the Director of Teacher Education Research and Training passed the order dated 9.8.2006, impugned in W.P.No.27148/2006, prohibiting the institute from admitting students for 2006-2007. Therefore the order cannot be found fault with.

35. It is true that the power to cancel the recognition, vests with NCTE under Section 17 of NCTE Act. But it does not mean that the Director of Teacher Education Research and Training, who is empowered to approve the staff list and students list, should merely be a silent spectator and allow such illegal activities to continue, till NCTE wakes up from its slumber and initiates action under Section 17. The Director of Teacher Education Research and Training, has a role to play in respect of the following, viz., approval of staff list, admission of students, ensuring the conduct of classes for the prescribed number of days in an academic year, ensuring the conduct of practical training and observation, conduct of examinations by the Director of Government Examinations and issue of Certificates of completion of course. Therefore, the Director has a duty cast upon him to prevent an institution, which is bogged down by rival claims over the right of management, from admitting students and that too more than the permitted intake. It is only in exercise of such a duty cast upon him that the order dated 9.8.2006 was issued by the Director and hence, there is no illegality or infirmity in the said order. Consequently, the writ petition challenging the said order dated 9.8.2006 is liable to be dismissed.

36. Before deciding the fate of W.P.No.27148/2006 arising out of the order dated 9.8.2006, I directed Mr.S.Udayakumar, learned Standing Counsel for NCTE to find out the fate of the inspection carried out at Annai Sathya Nagar, Madathukulam, on 11.10.2006. On instructions, it was stated by him that NCTE has rejected the request of the promoters, for shifting the location to Annai Sathya Nagar, Madathukulam. Thus in effect, there is no recognition for the promoters from NCTE, to run the institute at Annai Sathya Nagar, Madathukulam and hence, the order dated 9.8.2006 issued by the Director of Teacher Education Research and Training, has attained a seal of approval from NCTE also. Therefore, the writ petition WP No.27148 of 2006 is dismissed.

Question No.(b):-

37. Coming to the right or virtually the plight of the students, who are petitioners in W.P.No.47860 of 2006, it is seen that they were admitted in October 2005 for the academic year 2005-2006. Out of 48 students, 25 were admitted under the Management Quota and 23 were admitted under the Government Quota through the Single Window System. By virtue of the agreement holder holding physical possession of the property, in which the courses were started, these students are undergoing courses in the property of the agreement holder K.Ravi, though the Educational Agency has gone out. After going out, the Educational Agency viz., the promoters of the institute, have admitted students independently in the new location both for the academic year 2005-2006 and for the academic year 2006-2007. The admission for the academic year 2006-2007 was made on the basis of the interim order granted in W.P.No.27148 of 2006. Since the interim order in W.P.No.27148 of 2006 also goes following the fate of the main writ petition, the admission of students by the promoters for the academic year

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2006-2007 is illegal. Moreover, Mr.S.Udayakumar, learned Standing Counsel for the NCTE has reported that the Southern Regional Committee has rejected the request of the promoters to shift the location, by an order dated 14.12.2006. Thus, the admission made by the promoters for the academic year 2006-2007 is illegal.

38. In so far as the admission made by the promoters for the academic year 2005-2006 is concerned, the said admission also becomes illegal in view of the rejection order passed by NCTE on 14.12.2006, rejecting their request for change of location. In other words, the admission of students by the promoters for the year 2005-2006 in the new location, has become an admission to an unrecognised place. After inspecting the new location on 11.10.2006, the Southern Regional Committee of NCTE has found by its order dated 14.12.2006 that no recognition could be granted to the said location. Therefore, these students admitted by the promoters and undergoing the course in the new location, are actually undergoing the course in a place not approved by NCTE and hence their admissions have become illegal.

39. In so far as the admission of students by the agreement holder K.Ravi is concerned, the same is also illegal since he was not an Educational Agency empowered under the NCTE Act to admit any students. He was a lessor of the land and building and an agreement holder for the purchase of the order of recognition. Such agreement is already held to be void. Therefore, the continuance of the students in the place of the agreement holder, in the absence of the Educational Agency, is also wholly illegal. Merely because he is in physical possession of the premises and had filed a suit for a mandatory injunction, the agreement holder cannot admit students. K.Ravi had admitted in W.P.No.18980 of 2006 that the transfer could not be effected as per the agreement, on account of the refusal of the promoters to sign the relevant papers. This is why he has filed a civil suit for mandatory injunction. Such a person is virtually a person who has no recognition and consequently has no right to admit students.

40. But unfortunately, the petitioners in W.P.No.47860 of 2006 got admitted in October 2005 before the rival claimants fell apart. Out of these 48 candidates, 23 were admitted by the Government through Single Window System. Therefore the rights of these students will have to be protected. But even while protecting their rights, these students cannot be permitted to continue the second year of the Diploma Course in the place of the agreement holder, since it would be illegal. Therefore, the students of 2005-2006 batch will have to be rehabilitated, to enable them to undergo the second year of the Diploma Course.

41. In order to rehabilitate the students admitted by both the rival claimants for the academic year 2005-2006, I directed the learned Special Government Pleader (Education) to find out if the batch of students could be accommodated in other institutions for undergoing the second year. The learned Special Government Pleader (Education) submitted that if the NCTE grants approval for additional intake, to those

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institutions to which they may be reallotted, the Government could consider such a request. Mr.S.Udayakumar, learned Standing Counsel for NCTE also agreed to place the matter before NCTE for approving the additional intake to enable the rehabilitation of the students.

42. While rehabilitating the students, the students should not be imposed with any additional financial burden. Normally, if students leave a course midstream, the self-financing colleges demand the fees payable for the remaining period of the curriculum also, to relieve them. Therefore the same logic has to be applied on the reverse, by directing both the rival claimants to refund the amount collected from the students.

43. Under the above circumstances, all the three writ petitions are disposed of with the following directions:-

(a) The prayer made in W.P.No.27148 of 2006 for setting aside the order of the Director dated 9.8.2006 is rejected.

(b) In so far as the prayer made by the promoters of the institute in W.P.No.46403 of 2006 and the prayer made by the students in W.P.No.47860 of 2006 are concerned, the Director of Teacher Education Research and Training shall permit all those students admitted for the academic year 2005-2006 by both parties, to write the examinations scheduled to be held from 18.12.2006.

(c) After the completion of the examinations, the entire batch of students admitted by the promoters and the agreement holder K.Ravi as well as those admitted under the Single Window System for the academic year 2005-2006, shall be reallotted by the Director of Teacher Education Research and Training to other recognised or Government Teacher Training Institutions, for continuing the second year of the Diploma Course.

(d) The Director of Teacher Education Research and Training shall also send a proposal to the NCTE for the approval of the additional intake, to the institutions to which these students are reallotted, within a month from the date of receipt or production of a copy of this order.

(e) The Southern Regional Committee of NCTE shall consider the request of the Director of Teacher Education Research and Training for approval of the additional intake for those institutions to which these students are reallotted and pass appropriate orders, within one month of submission of the request by the Director of Teacher Education Research and Training.

(f) The students admitted by the promoters for the year 2006-2007 cannot continue the course, since they could have been admitted only after the interim stay order granted on 22.8.2006 in W.P.No.27148 of 2006. Therefore, the petitioner in W.P.No.27148 of 2006 shall

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return to those students, all the original certificates submitted by them, together with the entire amount of fees and other charges collected from those students, within a period of two weeks from the date of receipt or production of a copy of this order. Since these students could have been admitted only after 22.8.2006 and that too by virtue of an interim order of this Court, to the first year of the two year Diploma Course, these students may not be entitled to the rehabilitation, prescribed under clauses (c) to (e) above, along with the students admitted for the year 2005-2006. Therefore these students admitted for the academic year 2006-2007 will have to work out their remedies only against the persons who granted admission to them and they cannot seek approval of their admission.

(g) The petitioners in W.P.No.27148 of 2006 and 46403 of 2006 as well as the agreement holder K.Ravi, who is the petitioner in M.P.Nos.3 and 4 of 2006 in W.P.No.27148 of 2006, shall deposit with the Director of Teacher Education Research and Training, the entire amount of fees and other charges collected by them from the entire batch of 2005-2006 candidates, within two weeks from the date of receipt or production of a copy of this order.

(h) The amount so deposited shall be utilised by the Director for the purpose of making payment of fees and other charges on behalf of these students, when they are reallotted to other institutions. While making payment, if any short fall arises, the Director shall be entitled to collect the same also from the promoters and K.Ravi, in proportion to the number of students admitted by them. If the amount deposited by the promoters and the agreement holder is in excess of the tuition fee and other charges payable by the rehabilitated students to the reallotted institutions, the same shall be refunded to the students proportionately.

(i) The National Council for Teacher Education is directed to initiate action against the institute under Section 17 of the NCTE Act, within two weeks from the date of receipt or production of a copy of this order.

(j) Henceforth NCTE shall not merely issue the order of recognition in the name of the proposed institute. NCTE shall enclose to every order of recognition granted by them, a format of particulars containing the details relating to the name and address of the Educational Agency to which recognition is granted, (apart from the name of the Institute) the nature of the Educational Agency as to whether it is a Trust, a Society or a Company, the Registration Number of the Trust, Society or Company, the address in respect

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of which the institution was granted recognition to locate its institute. The NCTE shall also make it mandatory for the institutes to publish both the order of recognition as well as the enclosed format of particulars with the above details, in the prospectus inviting applications for admission, so that the students know the actual persons who run run the Educational Agency and their background and the students are thereby prevented from being taken for a ride and also prevented from claiming ignorance.

44. With the above directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Svn.

To

1.The Director of Teacher Education,
Research and Training,
College Road, Chennai-6.

2.The Director of Government Examinations,
College Road, Chennai-6.

3.The Regional Director,
National Council for
Teacher Education,
HMT Post, Jalhalli,
Bangalore-560 131.

4.The Principal,
District Institute of Education and
Training, Thirumurthy Nagar, Coimbatore.

5.Evva Memorial Teacher Training Institute,
Thippampatti P.O., Pollachi-642 107.

1 cc To Mr.S.Udayakumar, SCGSC, SR.63210.
1 cc To Mr.K.Sridhar, Advocate, SR.63395.

WP Nos.46403,27148
and 47860 of 2006

TS(CO)
RVL 22.12.2006

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